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C O N F I D E N T I A L SECTION 01 OF 03 ABUJA 000038

SIPDIS

E.O. 12958: DECL: 1.6X6

TAGS: [PGOV](#) [PHUM](#) [PREL](#) [SOCI](#) [NI](#)

SUBJECT: NIGERIA: SOKOTO STONING SENTENCE FOCUSES ATTENTION ON SHARI'A

REF: A. 01 ABUJA 2700

[1](#)B. 01 LAGOS 2881

Classified by CDA Andrews for reason 1.6x6

[1](#)1. (C) Summary: The death sentence imposed against Safiya Husseinini has generated international and domestic attention, lending her case political overtones perhaps more significant than its legal ones. To a certain degree, the judgment against Husseinini has also put Nigerian Shari'a on trial. International human rights groups as well as several politicians and public figures have chafed at the verdict. Hard-liners in the North, insisting the sentence be executed, have reacted testily, viewing the criticism as the encroachment of non-believers into their religious practice. Many moderate Muslims feel caught in the middle, not wanting to see Husseinini executed for adultery, but unwilling to publicly oppose the sentencing for fear of being deemed backsliding Muslims. Against this backdrop, the quintet of lawyers working on Husseinini's appeal does not hold much hope for reversing the sentence until the case reaches the Nigerian Supreme Court. End summary.

[1](#)2. (U) In early October Husseinini was sentenced to death by stoning for the crime of adultery. The Shari'a trial judge determined her pregnancy was conclusive proof of adultery since Husseinini was not married. However, citing lack of proof because only Husseinini offered testimony identifying her partner, the court absolved the man who Husseinini claims fathered her child. (Execution of the sentence has been postponed until the child has been completely weaned.) Shortly after the sentencing, Husseinini was secreted from her village and is currently residing in an undisclosed "safe house."

[1](#)3. (U) Through much of November and early December, the stoning sentence against Husseinini attracted much public debate and attention. Editorials and articles in daily newspapers and weekly magazines were common fare. However, President Obasanjo's signing of a putatively adulterated electoral law and Justice Minister Ige's tragic assassination have pushed Husseinini's case from center stage for the time being. As the shock from Ige's death diminishes with time and if the electoral law drama attains denouement, Husseinini's ordeal could return to the political spotlight.

[1](#)4. (C) Husseinini's case is symbolic on several fronts. First, it highlights the inevitable collision between criminal Shari'a and secular law, particularly the constitutional prohibition against cruel and unusual punishment. Second, it shows that Nigeria's Muslims are not monolithic in supporting criminal Shari'a nor the capital sentence imposed in this specific case. The several schools of thought can be segregated into two major camps. Islamic fundamentalists and conservatives uphold the stoning sentence as a proper outcome under Shari'a. The other camp views the verdict as too harsh and that the facts particular to the case, such as Husseinini's ignorance of the law, the lack of witnesses and the possible orphaning of the child, mitigate against capital punishment. (Note that most do not oppose criminal Shari'a in principle, but are uneasy about the application of its harshest elements and about whether often ill-trained, overzealous local judges adhere to the stringent procedural safeguards that Shari'a contains before imposing a "hard" sentence.) Third, perspectives of the case also cleave along the religion/regional divide in Nigeria. While Northern Nigerians do not unanimously agree with the sentence, Southern public opinion is more solidly against the sentence. Except for a few Islamic clerics based in the South, most Southerners who have commented publicly contend that no one has the right to cast the first stone in this case. Fourth, the case reveals the gulf between the fundamentalist concept of human rights that hold sway among elements many in Northern Nigeria and the view of more western-oriented thinkers, particularly human rights activists, who consider the punishment draconian and indefensibly disproportionate to the severity of the crime.

15. (C) During a December conversation with Polcouns, attorney Hauwa Ibrahim (strictly protect), one of a quintet of lawyers representing Hussein, was not sanguine about the Shari'a appeals court reversing the lower court's decision. She thought it unlikely a Shari'a court in the North would overturn the decision, given the case's visibility and the verdict's popularity among a vocal segment of the Northern population. After being heard by the Shari'a appeals court, the case would move to the Federal Court of Appeals. From there, the next and final stop would be the Supreme Court. (Neither the entire Federal Appeals Court nor the Supreme Court would hear this case. At these stages, each court would empanel a smaller group of Islamic scholars from among the courts members to hear the appeal.) Based on a private conversation with Supreme Court Chief Mohammed Uwais, Ibrahim felt Hussein's appeal would receive a sympathetic hearing. Uwais had said he "was waiting for the case," confided Ibrahim. Uwais (strictly protect) made a similar statement to the Charge in a recent private conversation.

16. (C) In addition to the obvious argument that the stoning sentence is constitutionally awry (cruel and unusual,) Ibrahim also believe the weight of Islamic jurisprudence argues for a reversal of the lower court decision. The attorney contended that even a strict interpretation of the Koran and relevant Hadiths did not compel the death sentence in the case of adultery (zina.) According to Ibrahim, the trial judge mechanistically adhered to a hard-line interpretation of Maliki jurisprudence. (Maliki is the dominant school of Sunni thought in Northern Nigeria.) Under most schools of Sunni jurisprudence, an unwed woman's pregnancy is not conclusive proof of adultery. However, unwed pregnancy can be considered very strong presumptive evidence of adultery in Maliki philosophy.

17. (C) Ibrahim maintained that the trial judge erred in applying this stringent interpretation of Maliki thought. There is no formal rule compelling a judge to adhere to the Maliki school when equity and the weight of Islamic law argue for a more lenient verdict, she explained. Additionally, Ibrahim asserted, there were several procedural errors with the conduct of the trial that would also warrant a reversal on appeal. While Ibrahim envisioned a favorable outcome in the Supreme Court, she was concerned that political pressures and considerations would complicate the tasks of both the attorneys and judges all along the appellate process.

Will Politics Affect The Law or Vice Versa

18. (C) The best way to minimize political interference, asserted Ibrahim, was to treat the case as a debate between different views of Islamic jurisprudence. By treating it as an intra-religious matter, progressive and moderate Islamic jurists would be free to adjudicate according to their conscience. However, she was concerned that an overt public campaign by non-Muslim sources against the sentence, particularly the Western human rights community, would unduly politicize the situation. Hard-liners would portray the criticism as a general attack on Shari'a and Islam by Western interlopers. At that point, moderates would be hard pressed not to side with the conservatives lest they be deemed weak of faith.

19. (C) There is also the sticky issue of religious and national pride. Northern Nigerians do not respond positively to moral lectures from outsiders. Although knowing an outsider might be rendering sound counsel, many Northern leaders would ignore that advice out of spite if they viewed the advice as tainted by outside moralizing belittling their religious and cultural practices. To avoid a dynamic that would harden positions regarding the Hussein case, Ibrahim hoped that the international human rights community would take a low key approach, giving the matter a chance to wind its way to the Supreme Court without becoming too much of a political hot potato.

110. (C) Ibrahim also felt that sustained criticism from predominantly Christian Southern Nigeria could negatively impact the case. Before the storm over the electoral law consumed his attention, Senate President Anyim Pius Anyim was one of the most visible Southerner to criticize the Hussein verdict. The late Attorney General Bala Ige also publicly condemned the sentence as atavistic. A few Lagos-based human

rights activists have also rued the verdict. However, perhaps showing their knowledge of religious and regional sensitivities, their criticism has been more circumspect than what might have been expected.

11. (C) Notwithstanding Ige's criticism of the sentence, the Federal Government has trod gingerly. President Obasanjo has repeatedly stated his dislike for "political Shari'a." But what is "political" in any given instance is in the eye of the beholder. Should Obasanjo seek to intervene he would become susceptible to the accusation of politicizing what is essentially a judicial matter. Also, Obasanjo remembers the flak his Administration, particularly Vice President Atiku, received because of its ambivalent position when criminal Shari'a was inaugurated by several Northern states last year. Already vulnerable to criticism in the North and with elections looming next year, Obasanjo probably is reluctant to run through a similar political fusillade over the fate of one individual. Thus, for the GON, the path of least resistance is to watch the appellate process run its course, in hopes of a successful outcome. If the appeal is not successful, the GON would have to grapple with a political-moral dilemma: deciding whether to pardon Hussein or somehow commute the sentence. (Comment: Press reports have indicated that the Ministry of Women's Affairs earlier had filed an appeal on behalf of Hussein. Apparently that appeal has been withdrawn or is dormant. End comment.)

The Person In The Eye Of The Storm

12. (C) While a lot of attention has been paid to the political and legal ramifications of her trial, few have paid attention to the actual welfare of Hussein. According to Ibrahim, Hussein is a simple bucolic woman who does not quite understand the maelstrom in which she finds herself. Hussein just wants to return to her normal life, Ibrahim indicated. For now, Hussein is safe. Her actual whereabouts are known only to a few. However Ibrahim is concerned that Shari'a vigilantes, commonly known as Hizbah, are searching for Hussein. Ibrahim worries that these vigilantes, mostly young ruffians under the control of a local cleric or politician, would not hesitate to execute the stoning should they locate Hussein. Ibrahim recounted how she has deflected numerous inquiries from people who she suspected of feigning concern for Hussein in order to find her and execute their fatal form of justice.

Comment

13. (C) For now, Hussein is not under the immediate threat of execution. No one in authority seems eager to have her killed. Several Islamic scholars have stated that Shari'a does not seek to punish people who are prone to accept ostracization from the Muslim community (Ummoh.) If she does not step forward, the authorities should not try to find her is their solution to the case, these scholars argue. In this way, the verdict is not overturned, Shari'a punishment (hudud) is not constitutionally challenged yet Hussein's life is spared. This could be a probable "compromise" outcome, although the specter of the vigilante Hizbah would follow her. Also, she would, in effect become a permanent fugitive. Like most compromises, this result is imperfect but it is the least volatile politically.

14. (C) From a human rights standpoint, a successful appeal would be more welcome. However, if and when the case reaches the Supreme Court, the panel of Justices will probably reverse the case on one or more of a number of procedural irregularities committed by the trial court. This tack might dispose of Hussein's case, but it would also skirt the larger issue - whether some traditional hudud sentences affront the constitutional bar against cruel and unusual punishment and are not in accordance with Nigeria's treaty obligations. Nevertheless, any verdict that reverses the trial courts would produce a hue and cry among some elements in the North that the GON and its judiciary are anti-Islamic and anti-Northern, despite the presence of Northerners in the Supreme Court. On the other hand, denial of the appeal and the subsequent execution of Hussein would be a tragic blow for human rights in Nigeria. For most Nigerians, Hussein is more a symbol than a person. In the end, the Hussein case, although very salient, represents just a step in what promises to be the long process of trying to reconcile the different schools of Islamic jurisprudence in Nigeria while also finding a modus vivendi between Shari'a and the human rights precepts of modern constitutional law.

